



IN THE
Supreme Court of the United States

October Term, 1942

No.....

PACIFIC STATES SAVINGS AND LOAN COMPANY AND STATE
GUARANTY CORPORATION,

Petitioners,

vs.

BABETTE M. TREDE and SUPERIOR COURT OF THE STATE
OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF
SAN FRANCISCO,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI.

I.

Statement of the Case.

A statement of the case has been set forth in the Petition (pp. 16 and 17), and to avoid duplication, is not repeated.

II.

Specification of Error.

The error complained of consists of the decision of the Supreme Court of the State of California, that the Su-

perior Court of said State, in and for the City and County of San Francisco, may authorize the sale in liquidation of real property of Pacific States Savings and Loan Company, pending the appeal in the action by said Company to recover its property, business and assets, without violating the guaranty of due process of law contained in the Fourteenth Amendment to the Constitution of the United States.

III.

Petitioners Were Deprived of the Benefit of the Guaranty of Due Process of Law.

The provisions of the Building and Loan Association Act of the State of California quoted in the Petition at page 5 provide for the summary seizure and liquidation of building and loan associations.

Section 13.11 of the Act provides for the summary seizure of such assets without notice.

Section 13.12 provides that the building and loan association may institute an action to recover its property, business and assets and to enjoin further proceedings. This section further recognizes the right of appeal as an integral part of such proceedings. It further specifies that in the event the judgment in such a proceeding is adverse to the building and loan commissioner and the building and loan commissioner is enjoined from further proceedings, and directed to surrender the business, property and assets to the association, an appeal therefrom "shall not operate as a stay thereof, unless the trial court in its discretion shall so order * * *."

The section further provides that if the judgment is adverse to the association, an appeal "shall not operate

as a stay thereof, but the court rendering such judgment may, in its discretion, enjoin the commissioner, pending the appeal, from further proceedings and direct him, pending the appeal, to surrender such business, property and assets to such association, provided a bond shall be given, etc.”

Section 13.13 prescribes the powers of the building and loan commissioner upon taking possession of the business, property and assets, and provides, among other things: “Unless the commissioner shall be enjoined from further proceedings and directed to surrender such business, property and assets or unless such association shall with the consent of the commissioner resume business, then the commissioner shall proceed to liquidate the affairs of such association as hereinafter provided.”

The subsequent provisions of the Act quoted prescribe the powers of the commissioner in liquidation.

It will be observed that the seizure of the business, property and assets may be made without notice, and that the procedure provided by statute to meet the requirements of “due process” includes the right of appeal.

The authority is vested in the Superior Court to enjoin the commissioner, pending the appeal, from further proceedings, and to direct him, pending the appeal, to surrender the business, property and assets to the association. The language is in the conjunctive, and does not authorize the Superior Court to enjoin further proceedings, pending the appeal, without also directing the return of the business, property and assets to the association.

The construction placed upon the statute by the Supreme Court of the State of California is to the effect that in the absence of such an order by the Superior Court,

the building and loan commissioner may proceed to liquidate the business, property and assets of the association. This may easily deprive petitioners of any benefit of the right of appeal, which is an integral part of the procedure. We recognize the principle that "due process" does not require that any right of appeal be provided. 16 *Corpus Juris Secundum*, page 1277, para. 626, and cases there noted.

Where, however, a right of appeal is provided as an integral part of the procedure designed to constitute due process of law, such right of appeal becomes an essential part of the "due process."

Frank v. Mangum, 237 U. S. 309, 59 L. ed. 969;
United States v. Mills, 21 F. Supp. 616, 618 (D.
C. E. D. Pa.).

Under these circumstances, if the property summarily seized and held, pending the appeal, may be so dealt with as to render the appeal futile and ineffective, the statutory procedure provided then fails to meet the requirements of "due process."

The principle of "due process" under the circumstances here presented requires that the responsibility for the full, complete and effective judicial determination be definitely settled. This requirement may be met by imposing this responsibility upon a single judicial officer or tribunal without any right of review; or it may be met by imposing the responsibility in the first instance upon a judicial officer or tribunal and providing a right of review. But in the latter case, the review should be equally as effective as the initial determination. If the right of review be ineffective, the result is that the responsibility of the initial

judicial tribunal is diminished without a compensating effective power in the reviewing tribunal.

It is a matter of common knowledge that where a right of appeal exists, trial judges are frequently influenced in their decisions by the consciousness that if an error is committed, a reviewing court will correct it. If no review is provided, a conscientious trial judge will ordinarily exercise a higher degree of care to protect the rights of all parties in his decision than otherwise. In practical effect the right of review involves a division of responsibility, and something less than complete responsibility is attained if the right of review be rendered ineffective in its consequences.

Protection of the right of "due process" requires that forms be disregarded and that inquiries be directed to the substance of the matter. This Honorable Court has frequently announced that principle.

Frank v. Mangum, 237 U. S. 309, 331, 59 L. ed. 969, 982;

Moore v. Dempsey, 261 U. S. 86, 67 L. ed. 543;

Mooney v. Holohan, 294 U. S. 103, 79 L. ed. 791;

Re Nielsen, 131 U. S. 176, 33 L. ed. 118;

Johnson v. Zerbst, 304 U. S. 458, 467, 82 L. ed. 1461, 1468.

There is little of the substance of due process of law in a procedure which permits:

(a) a summary seizure of private property without notice;

(b) a judicial proceeding to inquire into the merits of the seizure, which involves as an integral part the right of appeal;

(c) the authority, pending appeal, to deal with the property summarily seized so as to deprive the right of appeal of any effect or benefit.

These are the attributes of the proceeding presented by the record in this case.

The procedure outlined is illusory when measured by the requirements of due process of law. The association whose assets are thus summarily seized without notice may find itself before a tribunal in which doubtful questions are decided with reference to the right of review, and then suffer the liquidation of its property before a decision on appeal can be obtained.

Certainly, where property is taken in such a summary manner, it should be held intact unless there is some emergent or necessitous reason for disposing of it (absent in this case), until the remedies provided by law to determine the justification of such summary seizure have been pursued to finality.

For these reasons, it is respectfully urged that the writ of certiorari be issued as prayed for in the petition.

Dated, Los Angeles, California, June 9, 1943.

BYRON C. HANNA,

HAROLD C. MORTON,

Attorneys for Petitioners.

